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Worldwide Telecommunications

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 30, 1998

Ms. Margalie Salas, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: RM 9210

Dear Ms. Salas:

Enclosed please find an original and four copies of LCI International's Comments in RM 9210 in CC Docket Nos. 96-262, 94-1, 91-213, and 95-72.

If you have any questions or require additional information, please phone me at 703-714-1108.

Sincerely,

Michael B. Hazzard

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72
	)	

COMMENTS OF LCI INTERNATIONAL TELECOM CORP. IN SUPPORT OF PETITION FOR RULEMAKING FILED BY THE CONSUMER FEDERATION OF AMERICA, INTERNATIONAL COMMUNICATIONS ASSOCIATION, AND NATIONAL RETAIL FEDERATION

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SUMMARY

LCI International Telecom Corp. ("LCI") wholeheartedly supports the petition for rulemaking filed by the Consumer Federation of America ("CFA"), the International Communications Association ("ICA"), and the National Retail Federation ("NRF").

In the eight months since the Commission issued its First Report and Order in this docket,[1] it has become ever more apparent that a market-based approach to access charge reform simply will not accomplish, in any reasonably foreseeable time, a meaningful reduction in access charges -- charges that all parties concede are excessive and which cost consumers billions of dollars each year.[2] Rather than having intensified in the past eight months, the competition that the Commission envisioned bringing about a long-awaited reduction in access charges has, in fact, retrenched. Two major competitors, AT&T and MCI, have recently announced that they will no longer attempt to compete against the incumbent local exchange carriers ("ILECs") for the local exchange and exchange access business of residential customers, citing, among other reasons for their decision, inadequate operations support systems ("OSS") provided by the ILECs and an inability to

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1 *In the Matter of Access Change Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges*, CC Docket Nos. 92-262, 94-1, 91-213 and 95-72, First Report and Order, FCC 97-158 (rel. May 16, 1997) ("Access Charge Order").

2 The United States Telephone Association has admitted that its members-- the ILECs -- collect $20 billion more in access revenues each year than it costs them to provide access. *See* USTA says, "No Compromise" on Access Charges, *Communications Daily*, July 16, 1996 at 2. As the Commission is aware, these inflated access charges for the most part get passed along to consumers. *See* FCC, *Telecommunications Industry Review: TRS Fund Worksheet Data*, Table 3 (Feb. 1996) (contains Commission's estimate that 40 cents of every dollar spent by callers on long distance calls goes to local telephone companies to pay for access charges).

obtain reasonable and cost-based access to the ILECs' network elements.[3] Indeed, the absence of competition in the local markets was recently acknowledged by the Commission's new chairman, who observed that, "[i]n local markets, most consumers -- and especially residential consumers -- have no real choice. Incumbent telephone companies -- the historic monopolies -- still have over 98% of this market."[4]

The Commission's adoption of the market-based approach was based in large part on an overly-optimistic assumption that competitive local exchange carriers ("CLECs") would soon be able to meaningfully compete for local exchange and exchange access using unbundled network elements ("UNEs") leased at cost-based rates from the ILECs. That assumption has been seriously undermined by the ILECs' actions in the wake of the Eighth Circuit Court of Appeals decision in *Iowa Utilities Board v. FCC*, 120 F.3d 752 (8th Cir. 1997). As the Commission is aware, the ILECs have unilaterally declared that they will now physically disconnect elements that are already combined in their networks, and require CLECs to reassemble these elements in collocation facilities that the CLECs must first order and build. Clearly, the ILECs have imposed these requirements to frustrate and delay competition from CLECs, which they have. LCI, for example, has been forced to abandon its efforts to order and test a combination of UNEs leased from Ameritech, BellSouth and Bell Atlantic-NYNEX. And, given the projected costs of collocation -- running into the hundreds of thousands of dollars in major metropolitan areas -- the ILECs' new requirements will likely eliminate altogether

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3 *See* Communications Daily, January 22, 1998; *see also*, Communications Daily, November 17, 1997.

4 Remarks to Practicing Law Institute, Washington, DC, December 11, 1997 at 3.

any opportunity for CLECs to compete for local exchange and exchange access using network elements leased from the ILECs.[5] In the absence of such competition, there will be no competitive pressure upon the ILECs to reduce their bloated access charges.

For these reasons, which are discussed in more detail in the comments that follow, LCI requests that the Commission grant the petition and initiate a rulemaking to establish the proper method for accomplishing a prompt prescription of interstate access charges to cost-based levels, based on forward-looking economic cost.

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[5] At a technical conference before the New York Public Service Commission in December of 1997, a Bell Atlantic representative testified that the estimated cost to a CLEC to build collocation facilities in just one end office in Manhattan would range from a low of $340,000 to a high of $1.4 million. A copy of the transcript of that testimony is attached hereto as Exhibit A.

ARGUMENT

I. THE ACCESS CHARGE ORDER ASSUMED THAT CLECS WOULD BE ABLE TO READILY COMPETE FOR EXCHANGE ACCESS USING COMBINED UNES LEASED FROM THE ILECS AT COST-BASED RATES.

The Commission has frequently acknowledged the importance of UNEs to the development of competition in the local market, most recently in its order rejecting BellSouth's section 271 application for South Carolina.[6] In that order, the Commission stated:

> The use of unbundled network elements, as well as the use of combinations of unbundled network elements, is an important entry strategy into the local telecommunications market. In the 1996 Act, Congress sought to hasten the development of competition in local telecommunications markets by including provisions to ensure that new entrants would be able to choose among three entry strategies -- construction of new facilities, the use of unbundled elements of an incumbent's network, and resale. Congress included the second strategy because it recognized that many new entrants will not have constructed local networks when they enter the market. As a result, **the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market**.

BellSouth South Carolina Order at ¶ 195 (emphasis supplied).

The projected ability of CLECs to compete for exchange access using UNEs and combinations of UNEs was also a critical factor in the Commission's decision to adopt a market-based approach to access charge reform. Thus, in its Access Charge Order, the Commission noted that "[t]he availability of access services at competitive levels is vital to the general approach we adopt in this order, which

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6 *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (Rel. Dec. 24, 1997) ("BellSouth South Carolina Order").

relies on the growth of competition, including from competitors using unbundled network elements, to move overall access rate levels toward forward-looking economic cost." Access Charge Order at ¶ 337 (emphasis supplied).[7] And, in rejecting the argument that ILECs could use their inflated access revenues to engage in a "price squeeze," the Commission further noted that:

> [U]nder the provisions of § 251, a competitor will be able to purchase unbundled network elements to compete with the incumbent LEC's offering of exchange access. **Therefore, so long as an incumbent LEC is required to provide unbundled network elements quickly, at economic cost, and in adequate quantities, an attempted price squeeze seems likely to induce substantial additional entry into the local markets**. Accordingly, there should be a reduced likelihood that an incumbent LEC could successfully employ such a strategy to obtain the power to raise long-distance prices to the detriment of consumers.

Id. at ¶ 280 (emphasis supplied).

In sum, the Commission adopted a market-based approach to access charge reform assuming that CLECs could compete for local exchange and exchange access over combinations of UNEs obtained from the ILECs "quickly, at economic cost, and in adequate quantities." *Id.* As is discussed below, the actions of the ILECs since the order was issued demonstrate beyond dispute that the competition claimed by the ILECS and envisioned by the Commission has not developed and will not develop any time soon, if at all.

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7 The Commission's order in this regard essentially adopted the arguments advanced by the ILECs. For example, Bell Atlantic and NYNEX, in their joint comments in response to the Commission's Notice of Proposed Rulemaking in this docket, claimed that they would "not be able to exercise market power in the pricing of access services because alternative providers will be able to purchase unbundled elements from the LEC at cost and undercut rates for access services . . . that the LEC offers through its local network." Joint Comments of Bell Atlantic and NYNEX, 45 (Jan. 29, 1997).

II. THE ILECS HAVE USED AND ARE USING EVERY EFFORT TO PRECLUDE CLECS FROM COMPETING FOR LOCAL EXCHANGE AND EXCHANGE ACCESS USING UNE COMBINATIONS.

The Commission is aware that even before the decision in *Iowa Utilities Board v. FCC*, the ILECs had adopted practices and procedures designed to frustrate and delay the ability of CLECs to compete using UNEs and, in particular, combinations of UNEs. For example, in opposing Ameritech Michigan's section 271 application, LCI (and other competitors) detailed the problems they had experienced in attempting to order from Ameritech and test a simple combination of UNEs consisting of loops, local switching and shared transport.[8] In its order rejecting Ameritech Michigan's application, the Commission recognized that certain of Ameritech's practices and procedures regarding UNEs were not in compliance with the Act, and were preventing CLECs from competing for local exchange and exchange access services. Thus, the Commission concluded that (1) "Ameritech's refusal to permit requesting carriers that purchased its 'switched transport' service to provide exchange access service (and collect access charges) . . . violates the requirement that ILECs provide access to unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services, including exchange access service"; (2) "Ameritech's position on unbundled local switching is contrary to section 251(c)(3) of the Act and the Commission's rules . . . [because] Ameritech improperly limits the ability of competitors to use local switching to provide exchange

[8] *See Comments of LCI International Telecom Corp. in Opposition to Ameritech Michigan's Section 271 Application*, 3-10 (June 10, 1997).

access"; and (3) "Ameritech has failed to provide access to OSS functions [for UNEs] in accordance with the Act and the Commission's regulations."[9]

The roadblocks to competition erected by the ILECs have become even more insurmountable in the wake of the decision in *Iowa Utilities Board v. FCC*. As the Commission is aware from its recent order rejecting BellSouth's application for South Carolina, the ILECs are now refusing to provide CLECs with access to UNEs that are already combined in the ILECs' networks. Instead, the ILECs have unilaterally declared that they will physically disconnect combinations of elements before making them available to CLECs, requiring CLECs to reassemble those elements in collocation facilities that the CLECs will now be forced to order and build. As the Commission has previously determined, "such dismantling of network elements . . . increase[s] the costs of requesting carriers and delay[s] their entry into the local exchange market, without serving any apparent public benefit." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration, FCC 97-295, ¶ 44 (Rel. August 18, 1997). Indeed, as a result of these new requirements, LCI's negotiations with several ILECs to order and test a combination of UNEs known as the "UNE-Platform" have come to a stand-still.

The substantial delay in competition that these new procedures will most assuredly cause is due in large part to long lead times that are required to build collocation facilities. The Department of Justice in its evaluation of BellSouth's South Carolina application recognized that these long lead times will impede

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[9] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶¶ 317, 326 and 336 (Rel. Aug. 19, 1997) ("Ameritech Michigan Order").

competitive entry. *See Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No, 97-208, Evaluation of the United States Department of Justice, 23-25, Nov. 4, 1997. And, in addition to the substantial lead times that are required to build collocation facilities, the enormous cost of those facilities is, in and of itself, likely to make the use of combined UNEs economically unviable as a competitive strategy. For example, Bell Atlantic-NYNEX has estimated that the cost of building collocation facilities in just one end office in Manhattan could run anywhere from $340,000 to $1.4 million.[10] When these costs are multiplied by the hundreds of end offices that exist just in New York alone, the capital investment that a CLEC would have to make to compete using combined UNES is staggering, and beyond the reach of most, if not all, new entrants.

III. GIVEN THE LACK OF ANY FORESEEABLE, MEANINGFUL COMPETITION FOR EXCHANGE ACCESS SERVICES, THE COMMISSION SHOULD REJECT ITS MARKET-BASED APPROACH TO ACCESS CHARGE REFORM.

The Commission recognized in its Access Charge Order that it might need to revert to "using the prescriptive tools at [its] disposal in the event that competition does not develop . . . ." Access Charge Order, ¶ 258. That time has now come. It is apparent that CLECs have been, and will continue to be precluded for the foreseeable future from competing for local exchange and exchange access services using combinations of UNEs. Under these circumstances, there will be no competitive force driving the ILECs' inflated access charges toward cost. Thus, the ILECs will be able to continue to charge rates for access services that are significantly above their costs of providing those services, to the substantial detriment

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[10] *See* Exh. A.

of interexchange carriers and, ultimately, American consumers. The Commission should not allow this to continue unabated any longer.

CONCLUSION

For the foregoing reasons, the Commission should grant the petition filed by CFA, ICA, and NRF, and initiate a rulemaking to establish the proper method for accomplishing a swift prescription of interstate access charges to cost-based levels, based on forward-looking economic cost.

DATED: January 30, 1998

Respectfully submitted,

LCI INTERNATIONAL TELECOM CORP.
Anne K. Bingaman
Douglas W. Kinkoph

MORGENSTEIN & JUBELIRER LLP
Rocky N. Unruh

By: Rocky N. Unruh
Rocky N. Unruh

EXHIBIT A

NEW YORK STATE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

Case 97-C-0271 - Petition of New York Telephone Company for approval of its statement of generally available terms and conditions pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry pursuant to Section 271 of the Telecommunications Act of 1996.

MINUTES OF TECHNICAL CONFERENCE held at the Commission's Albany Office, Swan Street Building, Core 4 (North), Albany, New York, on Thuyrsday, the 4th of December, 1997, commencing at 9:05 a.m.

BEFORE: Eleanor Stein, Administrative Law Judge

Judith A. Lee, Administrative Law Judge

Jaclyn Brilling, Administrative Law Judge.

APPEARANCES:

For NEW YORK STATE DEPT. OF PUBLIC SERVICE STAFF:
By: ANDREW M. KLEIN, Counsel

EXHIBIT A

if you could resolve the other individualized issues?

A (Maguire) If the collocater based on the planning, pricing--I'm sorry, the estimated price of that space is interested in that space, yes.

Q What are the estimated prices? What's the range of costs? I know they've been submitted to the Commission on occasion for converting raw space to space suitable for physical collocation.

A (Maguire) Well, the range is rather significant, too, because it depends on the central office conditions themselves, whether power, HVAC has to be put in; if there's asbestos removal, various considerations go that that. The range that was in the letter was able $250,000 to $1.4 million.

BY MR. KLEIN:

Q I believe $340,000 may have been the lowest?

A (Maguire) Okay.

JUDGE LEE: 1.4 million?

THE WITNESS: (Maguire) Right. I guess to clarify that, that is the money that we, or that is the cost to make that space available, that we would pay to a contractor to perform that work.